



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/169873

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on January 21, 2016, at Kenosha, Wisconsin.

This hearing was previously scheduled for November 24, 2015, December 10, 2015, and January 5, 2016. The petitioner requested a reschedule of all three dates, which I granted. The hearing was held on January 21, 2016.

The issue for determination is whether the Family Care Program correctly denied the petitioner's request for an electric wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On August 25, 2015 the petitioner requested a power wheel-chair.
3. The petitioner is a 63-year-old woman. She lives with her elderly parents. She is diagnosed with MR, Cerebral Palsy, Osteoporosis, Hypertension, and Arthritis. She currently has a manual wheel chair. She previously had a double mastectomy. Her strength has deteriorated in recent years.
4. The petitioner does some clerical work at a center in Kenosha. She takes transportation to and from this work. With her manual chair, she is unable to get up and down her driveway independently. It is becoming increasingly difficult for her elder parents who are in their late 80s to assist her. The petitioner is also unable to carry items and propel her chair. She has further difficulty maneuvering over thresholds.
5. On August 27, 2015 the petitioner's doctor provided a letter stating that an electric wheelchair was necessary for the petitioner. The doctor was on vacation in Italy, but felt that the letter and wheelchair were so imperative, that she wrote and provided the letter while on vacation. The doctor has known, and presumably, treated this petitioner for 36 years. The doctor was clearly upset with the Family Care Program, and the quality of care that they provided the petitioner over the years. This doctor stated in no uncertain terms that the petitioner needed a motorized wheelchair to provide for her independence inside and outside her home. The doctor agrees that a hooyer lift and therapy will help the petitioner, but insists that an electric wheelchair is also medically necessary for this petitioner's independence.
6. On September 2, 2015 the Family Care Program sent the petitioner a notice stating that her Request for a Power Chair had been denied.
7. On November 4, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The petitioner requests a power wheelchair from the Family Care Program. When determining whether a service is necessary, the Family Care Program must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code, § DHS 101.03(96m).

In addition, the agency's contract with the State of Wisconsin prohibits its interdisciplinary team from denying services that are "necessary to assist the member to be as self-reliant and autonomous as possible." *Contract between Wisconsin Department of Health Services and Community Care, Inc.*

The agency denied the requested chair because it contends that the petitioner remains independent enough to perform her activities of daily living in a manual wheelchair. It further contends that she would lose core strength by switching to an electric chair, and that any issue with a manual chair is due to her parents getting too old and frail to assist her. They further argue that modifications to the petitioner's chair could fix any problems that the petitioner is having.

I disagree with the agency's arguments. The petitioner's doctor for the last 36 years vehemently states that an electric wheelchair is medically necessary for the petitioner. It is not an option to modify the petitioner's current manual chair as the petitioner's doctor refuses to sign a prescription or order to have the chair modified. She will not sign such an order because she does not think that a manual chair can effectively address the petitioner's needs. Thus, modification of the petitioner's manual chair is not an option in this case. I note that even if it were an option, I agree with the doctor that it would not address the petitioner's needs.

The standard in this case is not the same standard that Medicare uses to approve or deny an electric chair. Rather, I am looking to see if an electric chair is necessary to assist the petitioner to be as self-reliant and autonomous as possible. The petitioner testified that she cannot carry items. She cannot carry a glass of water. She cannot carry items at her work. Even if transportation could be improved where it would pick her up at her door, she cannot go up and down the ramp on her own. She cannot "walk" over to her aunt's home next door.

The most qualified medical professional who has the most experience treating the petitioner states that an electric chair is medically necessary. This petitioner has gone 63 years with a manual chair. At this point in time, I cannot sustain the agency's determination that the chair is not medically necessary, and that there are less expensive alternatives. Although a chair is expensive, the alternatives that the agency offers are not all available, and even if all were available, these alternatives would not allow the petitioner to be as self-reliant and autonomous as possible.

Because the agency denied the petitioner's request for a power wheelchair, there was no determination about which chair would best fit the petitioner's needs. For that reason, I am remanding this case back to the agency with the instructions that an electric wheelchair is medically necessary for this petitioner, and that they now need to determine which electric chair would best fit the petitioner's needs. Clearly the agency cannot provide a power wheelchair within 10 days of my decision. Nonetheless, the agency shall determine which power chair can best meet the petitioner's needs. If the petitioner disagrees with the agency's conclusion, the petitioner may appeal that decision to the Division of Hearings and Appeals, however, I would not anticipate this being an issue.

CONCLUSIONS OF LAW

The Family Care Program incorrectly denied the petitioner's request for an electric wheelchair.

THEREFORE, it is

ORDERED

The matter is remanded to the Family Care agency with instructions to re-determine the petitioner's request for a power wheelchair considering the requested item to be medically necessary and covered by Family Care, and to make a written determination of the power wheelchair that best meets her medical needs within 10 days of the date of this decision, and thereafter to take all actions necessary to deliver the appropriate wheelchair.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

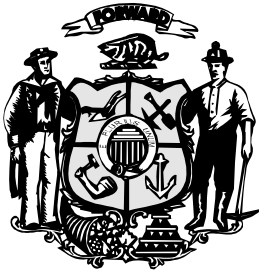
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of February, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 24, 2016.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability
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